

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

AIR TRANSPORT ASSOCIATION OF
AMERICA, INC. d/b/a AIRLINES FOR
AMERICA,

Plaintiff,

v.

MAURA HEALEY, in her official capacity
as Attorney General, Commonwealth of
Massachusetts,

Defendant.

No. 1:18-CV-10651-ADB

DEFENDANT'S MOTION TO
AMEND SCHEDULING ORDER,
WITH ASSENT

The defendant, Maura Healey in her official capacity as Attorney General for the Commonwealth of Massachusetts, moves for an order, with plaintiff's assent, to amend the Scheduling Order in the captioned matter. As grounds for this motion, the defendant states:

1. This is an action by an association representing U.S. based airlines challenging the application of the Massachusetts Earned Sick Time Law to its member carriers based upon Dormant Commerce Clause and preemption grounds under the Airline Deregulation Act. This extension is sought to enable the parties to complete complex expert discovery and leave sufficient time for defendant to prepare a cross motion for summary judgment, and both parties to prepare oppositions to the summary judgment motions and any reply briefs.
2. On April 2, 2020, the Court allowed a Joint Motion to Amend Case Schedule at plaintiff's request necessitated by the airlines' need to address Covid 19's disruption to their business. Pursuant to that order, the deadline for plaintiff's service of the Reply Report by its expert, Darrin Lee, was August 7, 2020.

3. On July 20, 2020, the plaintiff requested a two week extension of the deadline for serving Dr. Lee's Reply Report, to which defendant assented. On July 25, 2020, the plaintiff assented to defendant's request that one of its experts, Daniel Akins, prepare a response to Dr. Lee's then-anticipated Reply Report. The original purpose of that request was to enable Mr. Akins to address the impact of the Covid 19 pandemic on conclusions he reached in his pre-pandemic Rebuttal Report.
4. On August 25, 2020, plaintiff reported logistical problems that would further delay service of Dr. Lee's Reply Report and asked that the deadline be extended until the end of the month to which defendant agreed.
5. On August 31, 2020, plaintiff served Dr. Lee's Reply Report. The Lee Reply Report raised additional issues in response to Mr. Akins' Rebuttal Report that defendant did not anticipate. The Lee Reply Report was accompanied by a large volume of data in support of the report. Mr. Akins is attempting to cull the data to pinpoint that which is necessary for his reply to the additional issues raised in the Lee Reply Report which may require a meet and confer with counsel concerning the format of the data produced.
6. The additional work Mr. Akins is undertaking to review and respond to Dr. Lee's Reply Report and data, and commitments defense counsel has with motion deadlines in another matter in the U.S. District Court this month, has made it extremely difficult to complete the experts' depositions by the current October 9, 2020 deadline.
7. The defendant believes that Mr. Akins' reply to Dr. Lee's Reply Report will be a benefit to the parties and the Court. Mr. Akins' reply to Dr. Lee's Reply Report will allow full disclosure of all experts' positions prior to the depositions and avoid surprise later. The

extension may enable the parties to narrow the issues of material fact that are germane to the summary judgment motions each party has already filed or will file in the future.

8. This is the seventh request for an extension in this matter. The parties have been cooperative in their attempts to complete discovery in this complex matter but find it necessary to seek another extension to complete expert discovery.
9. The defendant, therefore, respectfully requests that the Court enter an Order to Amend the Case Schedule to extend the case deadlines as follows:

October 30, 2020: Daniel Akins' reply to Dr. Lee's August 31, 2020 Reply Report.
November 18, 2020: All expert depositions completed
December 18, 2020: Defendant's Motion for Summary Judgment filed
February 4, 2021: Opposition to Motion and Cross Motion for Summary Judgment
February 23, 2021: Brief in Reply to Opposition to Motions for Summary Judgment

Respectfully submitted,

MAURA HEALEY
ATTORNEY GENERAL

By her attorneys

/s/Matthew Q. Berge

Matthew Q. Berge (BBO#560319)

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DATED: October 7, 2020

With Assent:

AIR TRANSPORT ASSOCIATION OF
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AMERICA,
By its attorneys,

/s/ Chris A. Hollinger

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CERTIFICATE OF SERVICE

I certify that on October 7, 2020, a true copy of the above document was served through the Court's CM/ECF electronic filing system upon counsel for Defendant.

/s/ Matthew Q. Berge
Matthew Q. Berge